

# **EXHIBIT H**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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DIANNE L. KELLEY and KENNETH )  
HANSEN, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. C070475 MJP  
 )  
MICROSOFT CORPORATION, a )  
Washington corporation, )  
 )  
Defendant. )

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VIDEOTAPED 30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF  
MICROSOFT CORPORATION  
CHRISTINE MULLANEY SUNDLIE  
(CONTAINS CONFIDENTIAL TESTIMONY  
SUBJECT TO PROTECTIVE ORDER)

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1:52 P.M.

AUGUST 29, 2007

1001 FOURTH AVENUE, SUITE 4000

SEATTLE, WASHINGTON

REPORTED BY: JULIE R. HEAD, CRR, RPR, CCR No. 3119

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<p style="text-align: right;">Page 10</p> <p>1 Q. Sure.</p> <p>2 Do you know who's responsible for ensuring</p> <p>3 compliance with that type of consent decree?</p> <p>4 A. Not directly, no.</p> <p>5 Q. When you were a senior program manager for a</p> <p>6 year -- approximately a year ago, what program were you</p> <p>7 involved with?</p> <p>8 A. I was responsible for shipping the regulatory</p> <p>9 products that were required via the Korean Fair Trade</p> <p>10 Commission Order.</p> <p>11 Q. And, prior to that time, what was your job?</p> <p>12 A. I was a group program manager.</p> <p>13 Q. And what were your responsibilities as a group</p> <p>14 program manager?</p> <p>15 A. I was responsible for managing the OEM desktop</p> <p>16 operating system license agreements and -- ancillary</p> <p>17 programs in the OEM division.</p> <p>18 Q. Did you have any direct responsibility for the</p> <p>19 Windows Vista Capable logo program?</p> <p>20 A. I was involved in the implementation of the</p> <p>21 logo program.</p> <p>22 Q. Starting when?</p> <p>23 A. The Vista Capable program would be when we --</p> <p>24 prior to first -- us first announcing it to the OEMs and</p> <p>25 working with them, which would have been somewhere in</p>	<p style="text-align: right;">Page 12</p> <p>1 about retailers with respect to number five.</p> <p>2 MR. SMART: I understand that. Thank you.</p> <p>3 Q. (BY MR. SMART:) Thank you.</p> <p>4 Ms. Mullaney Sundy -- Sundlie, could you give</p> <p>5 me a thumbnail sketch of your educational background,</p> <p>6 please?</p> <p>7 A. Well, I graduated high school. I was a member</p> <p>8 of the honor society -- National Honor Society. I have</p> <p>9 attended probably up to my junior year in college at</p> <p>10 both Rutgers University and New York University.</p> <p>11 Q. Any other formal education past high school</p> <p>12 other than as identified?</p> <p>13 A. No.</p> <p>14 Q. Okay. Thank you.</p> <p>15 The first category that you've been called to</p> <p>16 testify on is the number of persons in the United States</p> <p>17 who purchased a computer to which a Windows Vista</p> <p>18 Capable sticker was affixed, but not also bearing the</p> <p>19 Premium Ready designation, correct?</p> <p>20 A. Correct.</p> <p>21 Q. How many of those people were there?</p> <p>22 A. I don't know.</p> <p>23 Q. Who would know that?</p> <p>24 A. Microsoft would not know it because we don't</p> <p>25 have records as to purchase -- computers purchased with</p>
<p style="text-align: right;">Page 11</p> <p>1 2005.</p> <p>2 Q. Have you ever given sworn testimony on behalf</p> <p>3 of Microsoft before?</p> <p>4 A. No.</p> <p>5 Q. Have you ever given sworn testimony before?</p> <p>6 A. No.</p> <p>7 Q. Have you ever been a 30(b)(6) designee before?</p> <p>8 A. No.</p> <p>9 Q. It's my understanding that you have been</p> <p>10 designated to testify to the subjects listed in Exhibit</p> <p>11 No. 1, Exhibit A, numbers one through four, six and</p> <p>12 seven; is that correct?</p> <p>13 A. No.</p> <p>14 Q. What categories are you going to testify on</p> <p>15 with regard to Exhibit No. 1?</p> <p>16 A. Items number one through six.</p> <p>17 Q. Okay. Would you take this pen and write your</p> <p>18 name in on the right-hand margin next to items number</p> <p>19 one through six, so that we can understand that that's</p> <p>20 what you're doing?</p> <p>21 MR. CASPER: Mr. Smart, while she's doing</p> <p>22 that, I would just clarify for the record that today's</p> <p>23 earlier designee already testified about number five</p> <p>24 with respect to retailers, and, so, Microsoft has not</p> <p>25 designated Ms. Mullaney Sundlie to designate -- to talk</p>	<p style="text-align: right;">Page 13</p> <p>1 the Windows Vista Capable sticker.</p> <p>2 Q. What -- What kind of records do you keep by</p> <p>3 which you can keep track of the dollars that are</p> <p>4 associated with the sales of Windows Vista Capable</p> <p>5 computers?</p> <p>6 A. In terms of computers? We don't keep track of</p> <p>7 computers. We don't sell computers.</p> <p>8 Q. What do you keep track of in order to</p> <p>9 determine how much money you are entitled to from the</p> <p>10 OEMs or the retailers who sell computers that have</p> <p>11 Windows Vista Capable stickers attached?</p> <p>12 A. The number of licenses that are sold and the</p> <p>13 associating revenue per license.</p> <p>14 Q. Okay. And how do you keep track of that?</p> <p>15 A. There are various ways to keep track of that.</p> <p>16 Q. Tell me all of the ways that exist, if you</p> <p>17 would, please.</p> <p>18 MR. CASPER: I'm going to object to this as</p> <p>19 beyond the scope of the 30(b)(6) deposition notice.</p> <p>20 MR. SMART: Well, I don't agree with that.</p> <p>21 Q. (BY MR. SMART:) You can go ahead, please.</p> <p>22 A. Okay. So, the way -- the various ways that we</p> <p>23 keep track of licenses. There are various channels that</p> <p>24 Microsoft does business with, and I --</p> <p>25 Q. When you use the term channel -- and I -- I</p>

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<p style="text-align: right;">Page 14</p> <p>1 did not mean to interrupt you, but I just -- if you're  2 going to use a term like that, I want to know what it  3 means before you get too far down the road.  4 A. Distribution channels.  5 Q. Okay.  6 A. Ways people -- things are sold.  7 Q. Okay.  8 A. It's common in any sales environment.  9 We have a retail channel, we have a direct OEM  10 channel, we have a system builder channel, we have a  11 volume licensing channel, and then we also have various  12 channels that are very focused on specific vertical  13 markets, such as Microsoft Developer Network, which  14 would be focused on developers and very technical.  15 Those are our channels.  16 Depending on the channel, the way -- the means  17 of distribution are different.  18 In the retail channel, we sell what we call  19 full package product and that would be the type of  20 product you'd see with a Microsoft logo on it that's  21 sitting in software stores such as Best Buy or Software  22 Etc, stores like that across the globe.  23 In the direct OEM channel, OEMs are  24 responsible for pre-installing our software on their  25 specific customer systems, and that's how the software's</p>	<p style="text-align: right;">Page 16</p> <p>1 any other product. It has what we call SKUs, which are  2 stock keeping units, which is a common manufacturing  3 term. The stock keeping units -- depending on the  4 channel -- all have individual part numbers for the  5 product and Home Basic would have its own stock keeping  6 unit for -- for each channel, and then those things  7 would be ordered -- each unit would be ordered and then  8 we would track how many units were ordered, how many  9 were returned.  10 Q. Does Microsoft have ways of verifying the  11 implementation or the activation of each of the licenses  12 associated with each of the sales?  13 MR. CASPER: I'm going to object as beyond the  14 scope of the 30(b)(6) designation, and, also object on  15 grounds of lack of foundation.  16 A. Let's see. So, can you repeat the question,  17 please?  18 Q. (BY MR. SMART:) Sure.  19 Does Microsoft have ways of verifying the  20 number of sales by information given to it through the  21 activation process when somebody installs, for instance,  22 Vista Home Basic and activates the license?  23 MR. CASPER: Same objection.  24 A. All right. So, from an act -- Activation is  25 not the same as a sale of a license. An activation --</p>
<p style="text-align: right;">Page 15</p> <p>1 distributed.  2 In the volume licensing channel, we have  3 customers who purchase -- customers of varying size that  4 purchase licenses and the method -- means of  5 distribution, there, is the customer signs a license  6 agreement and then deploys the product and, as it  7 deploys the product, reports to Microsoft the number of  8 licenses for each product that it's deployed.  9 And then, in the system builder channel,  10 the -- it's similar to retail, in that the system  11 builders are very small -- typically very small OEMs.  12 They build their own machines -- the machines are  13 often -- can be branded or non-branded, and the product  14 is sold in a cardboard box with a break-the-seal license  15 on it, and the customers -- the system builders purchase  16 those licenses from distributors and the distributors  17 ship the licenses to them, and then the customer  18 would -- the system builder would build the machine,  19 pre-install the software, attach -- affix the code to it  20 and then provide the customer with the system that  21 they've manufactured.  22 Q. So, what records does Microsoft then keep with  23 regard to, for instance, the sales of Windows Vista  24 Basic?  25 A. Well, Windows Vista Home Basic is tracked like</p>	<p style="text-align: right;">Page 17</p> <p>1 We don't activate every product. Activation is a means  2 of having the customer insert a product key -- or record  3 a product key in the product, either prior to or after  4 installation of the product on their system, and  5 activation is a means of us ensuring that the product  6 key that they're inserting is not a pirated product  7 key -- in other words, they're not stealing the software  8 from us.  9 Q. (BY MR. SMART:) So, is the primary means of  10 identifying how many copies of Windows Vista Home Basic  11 have been sold through the reporting from the customer?  12 A. Which customer?  13 Q. Any of the customers you identified through  14 the various channels you described a few minutes ago.  15 A. Reporting is different based on the channel.  16 Q. Okay.  17 A. And reporting by the customer is different  18 based on the channel.  19 Q. Okay. Tell me how the data is consolidated so  20 as to get a report as to how many copies of Windows  21 Vista Home Basic have been sold.  22 A. Well, in -- We have databases that contain  23 sales data. If you're purchasing -- If you're an OE --  24 a direct OEM and you've purchased a license, the  25 reporting, in terms of the number of licenses of a given</p>

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<p style="text-align: right;">Page 18</p> <p>1 product that you've acquired to pre-install, comes 2 through an authorized replicator and I'm sure it's an 3 automated system because, otherwise, we wouldn't be able 4 to do the volume of sales that we do. 5 Q. Let me stop you there for a second. An 6 authorized replicator is a machine that prints copies of 7 the software? 8 A. No, it's not a machine that prints copies of 9 the software. 10 Q. What is it? 11 A. An authorized replicator is a partner who is 12 permitted to perform various services on behalf of an 13 OEM or on behalf of Microsoft -- depending on -- on the 14 channel. 15 Q. And, so, do the authorized replicators then 16 report to you how many copies have been made and sold -- 17 for instance, to an OEM? 18 A. They don't report how many copies have been 19 made and sold. They report how many Certificate of 20 Authenticities have been shipped to a particular OEM for 21 a given product. 22 Q. Okay. It's the Certificate of Authenticity 23 that triggers a sale? 24 A. In the direct OEM channel, yes. 25 Q. Okay. And it's different for the other</p>	<p style="text-align: right;">Page 20</p> <p>1 Basic? 2 A. We have a means of identifying which channel 3 the license -- sold the license, if that's what you're 4 asking. 5 Q. That's what I'm asking. And what is the means 6 of identification? 7 A. Again, it's the stock keeping unit. 8 Q. Okay. So, after these copies of Windows Vista 9 Home Basic have been sold, how are the numbers tabulated 10 in a fashion that's a consolidated fashion so that 11 Microsoft knows how much money it's making and how many 12 copies of the software has been sold in a particular 13 time period? 14 A. Again, this information is collected in a 15 database. 16 Q. And is that a sales report database? 17 A. It's the database -- There are various 18 databases. The one that I am aware of is called MS 19 Sales. 20 Q. Okay. And MS Sales means Microsoft Sales; is 21 that right? 22 A. Yes. 23 Q. Okay. So, if Microsoft wanted to produce a 24 document that showed how many copies of Windows Vista 25 Home Basic had been sold in a particular time frame, it</p>
<p style="text-align: right;">Page 19</p> <p>1 channels; is that right? 2 A. Yes. 3 Q. Okay. So, just taking direct OEMs, somebody 4 counts the number of Certificates of Authenticity; is 5 that right? 6 A. The authorized replicator reports to us how 7 many are shipped. I'm not sure what you mean by 8 somebody counts. 9 Q. Somebody has to count them before they can 10 report to you the number that are shipped, don't they? 11 A. I don't think so. I think that they print the 12 number that are ordered and then ship the number that 13 are ordered. I'm sure someone confirms that they're 14 shipping what they printed. 15 Q. Okay. And then, at Microsoft, the records are 16 then collected and consolidated so as you get some sort 17 of a summary, right? 18 A. Yes. 19 Q. Okay. What's that called? 20 A. It would be a sales report. 21 Q. Okay. And the sales reports, are they kept 22 separately by channel? 23 A. It depends on what you mean by separately. 24 Q. Well, are the sales reports kept in each 25 channel of sales for, for instance, Windows Vista Home</p>	<p style="text-align: right;">Page 21</p> <p>1 could call up a report from the database called MS 2 Sales; is that right? 3 A. That's correct, but that's not the number -- 4 That's not a number that would equivocate to the number 5 of computers to which a Vista Capable sticker was 6 affixed. 7 Q. Okay. If Microsoft wanted to find out the 8 number of dollars that it had achieved through the sales 9 of Windows Vista Home Basic, would it call up a report 10 from the same database? 11 A. Yes. 12 Q. Okay. If Microsoft wanted to determine how 13 much a particular OEM was entitled to by way of of a 14 discount as a result of selling Windows Vista Home Basic 15 software through the Windows Vista logo program or any 16 other co-marketing program, would it consult with the 17 same database? 18 A. Yes. 19 Q. Okay. And how -- 20 A. But -- 21 Q. How are those -- 22 MR. CASPER: Please let her finish her answer 23 to the question. 24 A. But -- But, to clarify, we don't -- The 25 product is sold at a price. It's not sold -- We don't</p>

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<p style="text-align: right;">Page 38</p> <p>1 generated by Microsoft with respect to 2 other channels of sales outside the OEM 3 channels that identify compliance with 4 various milestones for retailers or 5 other sellers of Microsoft products in 6 conjunction with the Windows Vista 7 Capable program?"</p> <p>8 A. The Windows Vista Capable program is a program 9 targeted to our OEM channel, not to retailers, not to 10 volume license customers or any other kind of channel.</p> <p>11 Q. (BY MR. SMART:) Okay. So, I take it, then, 12 that there are no other similar reports for the other 13 channels?</p> <p>14 MR. CASPER: Object to the form of the 15 question as vague and ambiguous.</p> <p>16 A. I don't know what you mean by similar reports.</p> <p>17 Q. (BY MR. SMART:) Okay.</p> <p>18 A. If I'm saying that the channels don't have 19 anything to do with the program, I'm not sure what 20 reports you'd be referring to.</p> <p>21 Q. In order to get the number of particular kinds 22 of Windows Vista Capable licenses that have been sold 23 through an OEM channel, we would look at the reports 24 from the OEMs to Microsoft, right?</p> <p>25 MR. CASPER: I'm going to object to the form</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. (BY MR. SMART:) Okay. So, it's just the 2 database through MS Sales?</p> <p>3 A. Yes.</p> <p>4 Q. And just the sales reports?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, what other types of incentives 7 does Microsoft give to its sellers other than those 8 which are identified in -- sorry. Let me ask it this 9 way: What other types of incentives does Microsoft give 10 to the sellers of its window Vistas capable licenses 11 other than those that are identified in the marketing 12 agreement that we just discussed?</p> <p>13 MR. CASPER: Object to the form of the 14 question: It assumes facts not in evidence; it 15 mischaracterizes the witness's testimony.</p> <p>16 Q. (BY MR. SMART:) You can go ahead and answer 17 the question, ma'am.</p> <p>18 A. Again, there's no such thing as a Windows 19 Vista Capable license.</p> <p>20 Q. Okay. I'll ask it again this way: What other 21 incentives does Microsoft give to license -- to sellers 22 of licenses that were sold during the Windows Vista 23 Capable period, other than those in the marketing 24 agreement that we just described?</p> <p>25 MR. CASPER: Object to the form of the</p>
<p style="text-align: right;">Page 39</p> <p>1 of the question as vague and ambiguous and misstating 2 the witness's testimony.</p> <p>3 THE WITNESS: There's no such thing as a 4 Windows Vista Capable license.</p> <p>5 Q. (BY MR. SMART:) Okay. For the purpose of 6 determining the number of licenses that were sold to 7 OEMs during the time period that the Windows Vista 8 Capable program was in existence, what are the reports 9 that you would look to to determine how many such 10 licenses were sold through OEMs?</p> <p>11 A. The Microsoft sales reports that I've referred 12 to previously.</p> <p>13 Q. Okay. Now, for sales of licenses during that 14 same time period through other channels, what reports 15 would you look to?</p> <p>16 A. The Microsoft sales reports to which I 17 referred to earlier.</p> <p>18 Q. Okay. So, have you fully now -- have you now 19 fully described all of the reports that exist for the 20 purpose of determining how many licenses were sold 21 during the Windows Vista Capable program period?</p> <p>22 MR. CASPER: Object to the question as being 23 beyond the scope of the 30(b)(6) designation, lack of 24 foundation.</p> <p>25 A. And the answer is yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 question as vague and ambiguous, particularly with 2 respect to the term sellers.</p> <p>3 Q. (BY MR. SMART:) What I'm looking for is 4 incentives given to those other than OEMs.</p> <p>5 A. I don't know. I'm not privy to that 6 information.</p> <p>7 Q. Would it be fair to say, then, that you do not 8 know what audits and reports exist from which other 9 sellers from other channels other than OEMs could be 10 determined?</p> <p>11 MR. CASPER: Object to the form of the 12 question as vague and ambiguous.</p> <p>13 A. I've already indicated to you the various 14 channels -- primary channels that Microsoft sells its 15 products through. I've already indicated to you that we 16 keep the sales information regarding our licenses of the 17 various products for each channel in that same database. 18 I don't know how better to answer your question. I'm 19 not sure what your reference to audits and something 20 else is.</p> <p>21 Q. (BY MR. SMART:) In the database, do you keep 22 track of documents that identify which licenses were 23 sold during the time period in which the Windows Vista 24 Capable program was running?</p> <p>25 A. If you're asking whether our license sales</p>

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<p style="text-align: right;">Page 42</p> <p>1 records contain data that can tell us from X date to Y  2 date we sold X number -- Y -- Z number of licenses of a  3 given product, the answer is yes.  4 Q. Okay. And tell me how -- tell me how it does  5 that.  6 A. Like any financial system would do it.  7 There's a -- Customer places an order on a  8 given date, we record the order on that date -- or our  9 distributors report the order on that date, the  10 distributors report to us the orders for a given time  11 period, and that set of orders is recorded for that time  12 period.  13 Q. And is there a way to coordinate that  14 information with those sellers who are participating in  15 the Windows Vista Capable logo program?  16 MR. CASPER: Object to the form of the  17 question as vague and ambiguous.  18 A. So, to clarify, yes, we could tell you that a  19 given number of licenses for a given product were sold  20 during a given period of time and we could tell you  21 which OEM purchased what number of products. That  22 doesn't mean, however, that we, Microsoft, can correlate  23 that license information -- purchase information -- with  24 the exact number of systems of a given make and model  25 that qualify for the Vista Capable program according to</p>	<p style="text-align: right;">Page 44</p> <p>1 could be, you know, a large corporation placing an  2 order -- there's any number of cust -- types of  3 customers. They take an order from a customer. They  4 determine, based on that order, whether they need to  5 customize a given model that the customer's ordering or  6 whether they can ship it just the way it is.  7 When the PC gets to the manufacturing floor,  8 each PC is individually installed with the desired  9 operating system -- it could be a non-Microsoft  10 operating system; it could be a Microsoft operating  11 system; it could be any version of a Microsoft operating  12 system.  13 At the point where the customer has defined  14 what operating system they want, the operating system  15 gets installed by the manufacturer. When it goes down  16 the line, other things can happen -- one thing would be  17 the person on the manufacturing line would have to  18 figure out what operating system is installed. The --  19 That -- The reason they would figure that out is because  20 they have to figure out which Certificate of  21 Authenticity to apply to the PC.  22 Once they apply the Certificate of  23 Authenticity, they may have other things that they do to  24 the PC -- requirements by Microsoft from a logo program  25 perspective or requirements by other vendors in terms of</p>
<p style="text-align: right;">Page 43</p> <p>1 the OEM's documentation to us.  2 Q. (BY MR. SMART:) But you could get a ballpark,  3 right?  4 A. No.  5 Q. The OEMs who participated in the Windows Vista  6 Capable license -- excuse me -- the Windows Vista  7 Capable logo program were required to affix the Windows  8 Vista Capable logo to their computers, right?  9 A. Correct.  10 Q. So, if one copy of Windows Vista Basic went  11 from one computer to an OEM participating in that  12 program, then you would have the ability to at least say  13 that one such copy was sold with each of those Windows  14 Vista Capable computers, right?  15 A. No.  16 Q. Why not?  17 A. Because the way the OEMs manufacture -- And  18 our returns data would show this. The way the OEMs  19 manufacture the computers, they have a process -- and  20 each OEM could have an individual process, so I'm  21 speaking in very general terms, here. They have a  22 process by which they take an order from a customer --  23 and their customers can be many -- it can be an  24 individual consumer buying online; it can be a retailer  25 who's buying a large number of systems for them; it</p>	<p style="text-align: right;">Page 45</p> <p>1 license agreements they have with them or marketing  2 agreements they have with them. There's any number of  3 components that they have to deal with.  4 The -- It's entirely possible and likely,  5 depending on the type of order that they're receiving  6 and their way of processing that order, that the logo  7 does not get applied until the very end of the process,  8 once they know exactly what operating system was  9 installed on the system and they've verified that via  10 the Certificate of Authenticity that's applied on the  11 system.  12 So, it's not this magic process that happens  13 where they know exactly what number of systems shipped  14 with a logo, potentially. Now, again, you'd have to  15 verify that with each and every OEM as to their process.  16 Q. Microsoft receives reports from the OEMs  17 concerning how many Windows Vista Capable computers it  18 sells, right?  19 A. No.  20 Q. Microsoft audits the number of Windows  21 Vista-capable computers sold by OEMs, does it not?  22 A. No.  23 Q. Have you searched for -- Have you asked any  24 other department at Microsoft whether it audits such  25 sales?</p>

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1 A. I know that they don't.  
 2 Q. And you know that they don't for what reason,  
 3 ma'am?  
 4 A. Because I worked in the OEM division and I'm  
 5 familiar with the OEMs' processes and our methodology  
 6 for doing business in the very -- various programs.  
 7 Q. Does the MS sales database tell you how many  
 8 computers were sold with Express Upgrades to Windows  
 9 Vista Basic?  
 10 A. No.  
 11 Q. How would you learn that number?  
 12 A. You'd have to ask the individual OEMs.  
 13 Q. What records does Microsoft keep with regard  
 14 to Express Upgrades to Windows Vista Basic?  
 15 A. We would keep records of the number of  
 16 licenses for the Express Upgrade products that were  
 17 ordered by the OEMs.  
 18 Q. And where are those documents kept and what  
 19 are they called?  
 20 A. Again, this would be in the Microsoft sales  
 21 database.  
 22 Q. Okay. So, same database?  
 23 A. Yeah.  
 24 Q. And if you wanted to get a report, you'd just  
 25 call it up as a report by what name?

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1 A. It would be a Microsoft sales report.  
 2 Q. Okay. Tell me what it's called to determine  
 3 what numbers of Express Upgrade licenses were sold  
 4 during a particular time period? How would you describe  
 5 it?  
 6 A. It would be a Microsoft sales report.  
 7 Q. Okay. By what name?  
 8 A. A Microsoft sales report.  
 9 Q. Well, a Microsoft sales report doesn't refer  
 10 to a specific OEM or a specific time period, correct?  
 11 A. Correct.  
 12 Q. So, how would you tailor the report?  
 13 A. I would have to query the database for cust --  
 14 the customer name and the specific stock keeping unit  
 15 for the Mic -- the Express Upgrade program product, and  
 16 then the specific time frame that we're looking at.  
 17 Q. Okay. And what is the SKU number for the  
 18 Express Upgrade?  
 19 A. I have no idea.  
 20 Q. Okay. Who at Microsoft would know that?  
 21 A. The information would be in the database and  
 22 our sales operations group would have record of all of  
 23 the stock keeping units that we have for the Express  
 24 Upgrade program.  
 25 Q. Okay. And then are there also compilation

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1 documents that say, overall, how many such licenses or  
 2 Express Upgrades were sold during particular time  
 3 periods?  
 4 A. We would -- We can -- We could generate such a  
 5 report, but I'm not aware of any documents that are --  
 6 that have been created specifically for that purpose on  
 7 a regular basis.  
 8 Q. But it's easy to do just by querying the  
 9 database correctly?  
 10 A. Yes.  
 11 Q. Okay.  
 12 Let's take a short break, if we could, please.  
 13 THE VIDEOGRAPHER: We are now going off the  
 14 record in the continuing deposition of Christine  
 15 Mullaney Sundlie. The time is now 2:50 p.m.  
 16 (Recess taken.)  
 17 THE VIDEOGRAPHER: We are now back on the  
 18 record in the continuing deposition of Christine  
 19 Mullaney Sundlie. The time is now 3:01 p.m.  
 20 Q. (BY MR. SMART:) Ms. Mullaney Sundlie, did any  
 21 of the OEMs ever report to Microsoft, for any purpose,  
 22 the number of licenses sold by them during the Windows  
 23 Vista Capable program?  
 24 A. No.  
 25 Q. How do you know that?

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1 A. Because of the OEMs don't directly report to  
 2 us.  
 3 Q. Is it your testimony that nobody at Microsoft  
 4 has any information concerning the number of licenses  
 5 sold by any OEM during the Windows Vista Capable  
 6 program?  
 7 MR. CASPER: Objection: Mischaracterizes the  
 8 witness's testimony.  
 9 A. Restate the question.  
 10 Q. (BY MR. SMART:) Is it your testimony, ma'am,  
 11 that no one at Microsoft has any information concerning  
 12 the number of licenses sold by any OEM during the  
 13 Windows Vista Capable program?  
 14 MR. CASPER: Same objection.  
 15 A. We can -- We can tell what licenses OEMs  
 16 purchased from Microsoft during the time period. We  
 17 can't confirm for you how many licenses shipped,  
 18 pre-installed, on computers by the OEM during that same  
 19 time period.  
 20 Q. (BY MR. SMART:) Okay. Does anybody at  
 21 Microsoft have any information concerning how many  
 22 licenses -- XP licenses -- were in channel prior to the  
 23 time the Windows Vista Capable program was started?  
 24 A. Which channel?  
 25 Q. In channel for sale during the -- or through

13 (Pages 46 to 49)



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<p style="text-align: right;">Page 110</p> <p>1 this case?</p> <p>2 A. Yes.</p> <p>3 Q. In your request -- Answer -- strike that.</p> <p>4 In your work that you performed relating to</p> <p>5 answering the requests for production of documents, did</p> <p>6 you look for any e-mails or meeting minutes, senior</p> <p>7 executive notes or minutes, presentations, OEM documents</p> <p>8 in the possession of Microsoft, comments or feedback</p> <p>9 from OEMs regarding the Windows Vista Capable program,</p> <p>10 or any of the other documents that you have said in this</p> <p>11 deposition that you have not looked for?</p> <p>12 A. I did not specifically look for each and every</p> <p>13 document or each and every e-mail that would have been</p> <p>14 in my possession.</p> <p>15 Q. Did anybody --</p> <p>16 MR. CASPER: Wait. Please let her finish.</p> <p>17 Q. (BY MR. SMART:) I'm sorry, I didn't mean to</p> <p>18 interrupt.</p> <p>19 A. I am aware of the documents that we've</p> <p>20 discussed today because they were part of discussions</p> <p>21 with my attorneys.</p> <p>22 Q. Meaning you located some e-mails, but they</p> <p>23 weren't produced to us in this case; is that right?</p> <p>24 MR. CASPER: Objection: That mischaracterizes</p> <p>25 the witness's testimony.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. No.</p> <p>2 Q. Do you know why no documents from the</p> <p>3 Microsoft database that you've discussed during your</p> <p>4 deposition have been given to us in this litigation?</p> <p>5 A. Again, there's not documents in the database,</p> <p>6 but in terms of creating reports, no, I don't know.</p> <p>7 Q. Do you know why no reports that have come from</p> <p>8 that database which are in Microsoft's position have</p> <p>9 been given to us in this litigation?</p> <p>10 A. No.</p> <p>11 MR. SMART: Well, I will note for the record</p> <p>12 that we have made an extensive request for production to</p> <p>13 Microsoft and we haven't received any of these</p> <p>14 documents. I'm noting that for the record because we</p> <p>15 have a variety of deadlines and motions that are going</p> <p>16 to be coming up in the near future; that we think that</p> <p>17 these documents are long overdue to be produced. We</p> <p>18 don't know why they haven't been produced. And I'm</p> <p>19 telling you, Mr. Casper, that I expect that they will be</p> <p>20 produced in short order. And I will have further</p> <p>21 questions of this witness when I have those documents.</p> <p>22 MR. CASPER: This is not the time or the place</p> <p>23 for a discussion about the production of documents.</p> <p>24 Mr. Rummage and I will be happy to talk to you in a</p> <p>25 meet-and-confer process if you have questions about</p>
<p style="text-align: right;">Page 111</p> <p>1 A. So, did I locate some e-mails? Yes. Did I</p> <p>2 locate e-mails specifically related to what you detailed</p> <p>3 before in that long list? Not specifically, no.</p> <p>4 Q. (BY MR. SMART:) Okay. Do you know why no</p> <p>5 e-mails have been produced to us in this litigation?</p> <p>6 A. I have no idea.</p> <p>7 Q. Do you know why no board meeting minutes have</p> <p>8 been produced to us in this litigation?</p> <p>9 A. I have no idea.</p> <p>10 Q. Do you know why no minutes, memoranda, or</p> <p>11 other notes of senior executives have been delivered to</p> <p>12 us in this litigation?</p> <p>13 A. I do not know.</p> <p>14 Q. Do you know why no presentations have been</p> <p>15 delivered to us in this litigation?</p> <p>16 A. No.</p> <p>17 Q. Do you know why no OEM documents in the</p> <p>18 possession of Microsoft have been delivered to us in</p> <p>19 this litigation?</p> <p>20 A. It's -- Meaning documents created by the OEMs?</p> <p>21 Q. Yes.</p> <p>22 A. No.</p> <p>23 Q. Do you know why no comments or feedback from</p> <p>24 the OEMs regarding the Windows Vista Capable program</p> <p>25 have been given to us in this litigation?</p>	<p style="text-align: right;">Page 113</p> <p>1 document production. We're always available to do</p> <p>2 that -- we'll be happy to -- but statements on the</p> <p>3 record of this deposition have -- have no effect and</p> <p>4 aren't something that -- that we can properly act on.</p> <p>5 MR. SMART: Well, of course, we've already had</p> <p>6 a meet and confer and haven't got any other documents</p> <p>7 other than the ones that are in Exhibit No. 3. As I'm</p> <p>8 sure you well know.</p> <p>9 So, with that, I think I'm done for the day.</p> <p>10 MR. CASPER: Let's take a break, if we might.</p> <p>11 MR. SMART: Sure. You bet.</p> <p>12 THE VIDEOGRAPHER: We are now going off the</p> <p>13 record in the continuing deposition of Christine</p> <p>14 Mullaney Sundlie. The time is now 4:51 p.m.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: We are now back on the</p> <p>17 record in the continuing deposition of Christine</p> <p>18 Mullaney Sundlie. The time is now 5:02 p.m.</p> <p>19 EXAMINATION</p> <p>20 BY MR. CASPER:</p> <p>21 Q. Ms. Mullaney Sundlie, you were asked some</p> <p>22 questions earlier today about the Express Upgrade</p> <p>23 process. Do you recall those questions?</p> <p>24 A. Yes.</p> <p>25 Q. And what is an Express Upgrade?</p>

29 (Pages 110 to 113)

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<p style="text-align: right;">Page 114</p> <p>1 A. An Express Upgrade is an upgrade which was 2 provided by the OEMs to their customers for PCs that 3 were purchased by those customers that qualified for the 4 Windows Vista Capable logo. 5 Q. So, a customer of an OEM could get an Express 6 Upgrade to Windows Vista once it came out? 7 A. Yes. 8 Q. Could -- Can you tell me what the mechanics 9 were, basically, of fulfilling the customer's request 10 for those upgrades, the ones who wanted to have them? 11 A. Okay. 12 For the direct OEMs, the OEM could contract 13 with any authorized replicator -- which would be a 14 fulfillment vendor -- and the authorized replicator 15 would manage the program on their behalf and fulfill -- 16 take the customer's information in and then fulfill the 17 media and the Certificate of Authenticity for Windows 18 Vista back to the customer based on specific information 19 that they were required to obtain from the customer 20 regarding the purchase. 21 In the case of -- 22 Q. Before you go to another case, let me ask you 23 a question about that. So, in the case of -- of OEMs -- 24 that is, the direct OEMs you just described -- would the 25 number of Express Upgrade fulfillments be available from</p>	<p style="text-align: right;">Page 116</p> <p>1 the customer's personally identifiable information -- 2 their shipping information, basically. 3 Q. You're referring to their name and address? 4 A. Yes. 5 Q. Would Microsoft also be able to obtain, 6 through both of these channels, the version of -- or 7 edition of Windows Vista that was fulfilled? 8 A. Yes. That would be part of the license 9 purchase that they would have had to make in order to 10 perform the fulfillment activity. 11 Q. Okay. You testified earlier, when you were 12 being questioned about sales through the system builder 13 channel, I believe -- if I'm remembering correctly -- 14 that licenses sold by system builders could be known in 15 their aggregate number by Microsoft from MS Sales. Is 16 that what you meant to say? 17 A. What I meant to say, in all of our 18 transactions, whether it's to the direct OEMs or the 19 system builders in the OEM channel, it's always the 20 number of licenses that the OEM or the system builder 21 acquires from Microsoft that we have information on. We 22 never have information -- Except in the case I just 23 talked about for the Express Upgrade program where we 24 managed, on behalf of the system builders, the program, 25 we never have information that specifically tells us how</p>
<p style="text-align: right;">Page 115</p> <p>1 those authorized replicators to Microsoft? 2 A. The number would be available upon request. 3 Q. Okay. And would the names and addresses of 4 the people who got those upgrades be available to 5 Microsoft? 6 A. Not at all. 7 Q. Okay. Was -- Was there another mechanism for 8 fulfilling Express Upgrade requests? 9 A. Yes. For our smaller OEMs, which we call 10 system builders, Microsoft contracted with an authorized 11 replicator to manage fulfillment of the Express Upgrade 12 program on our behalf, which is basically on their 13 behalf, because the license was still -- the support and 14 other relationships with the system builder were still 15 between the end user customer and the system builder, 16 and, in those cases, the authorized replicator would be 17 fulfilling on behalf of Microsoft for the system builder 18 and asked for similar information or the same 19 information that the OEMs would be required to ask for 20 of the consumer about their purchase. 21 Q. In the case of customers of system builders 22 who obtained Express Upgrades, what information would be 23 available to Microsoft from the fulfillment contractor? 24 A. We would know -- We would be able to request 25 the number of upgrades that were fulfilled and, also,</p>	<p style="text-align: right;">Page 117</p> <p>1 many consumers actually acquired a given product or a 2 given PC. 3 Q. Okay. You testified earlier about the 4 communications that Microsoft has with the OEMs 5 regarding the Windows Vista Capable program, and you 6 mentioned that there were word processing documents. 7 Have -- Have you attempted to determine how many word 8 processing documents are -- are in Microsoft's 9 possession regarding the Windows Vista Capable program, 10 in so far as it relates to communications with OEMs? 11 A. Not the specific number, no. 12 Q. And do you know if all the documents that are 13 available in Microsoft's records are included in Exhibit 14 3 which is before you? 15 A. No, I don't. 16 Q. You also mentioned a presentation that I 17 believe you said -- was also relating to the Windows 18 Vista Capable program and the communications with OEMs. 19 What -- What did you mean when you -- you spoke of one 20 presentation? 21 A. Okay. When we're managing a program, in order 22 to make sure that we are communicating clearly to OEMs, 23 we often -- most of the time I would say -- start with a 24 single presentation and modify it over time, and then 25 what we're able to do is actually communicate to them</p>

30 (Pages 114 to 117)